

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760
david@weinsofflaw.com

JUL 03 2018

Via Certified Mailing – Return Receipt

June 28, 2018

Steve Tamburelli, President and CEO
Jon-Mark Chappellet, Director of Operations/Manager
Clos Du Val Wine Company, Ltd.
5330 Silverado Trail
Napa, CA 94558

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act (Clean Water Act)**

Dear Mr. Tamburelli, Mr. Chappellet, and Managing Agent:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at the winery owned and operated by Clos Du Val Wine Company, Ltd. (“Winery”) located at 5330 Silverado Trail in Napa, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and real property. This Notice addresses the violations of the CWA, including violation of the new terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Winery indirectly into the Napa River, a navigable water of the United States impaired under the federal CWA § 303(d) for pathogens, nutrients, mercury, sediment/siltation.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA §402(p), 33 U.S.C. § 1342. CWA §402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Winery. Consequently, Clos Du Val Winery Company, Ltd., (the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1), as well as the failure to comply with requirements set forth in the California Code of Federal Regulations and the San Francisco Bay Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the “General Permit”) relating to recycling services and operations taking place at the Winery.

The Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent (“NOI”) agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on or about August 10, 2015 and the Discharger is assigned Waste Discharger Identification (“WDID”) number 2 28I025907. River Watch, on the basis of eye-witness reports and records publicly available, and/or records in the possession and control of the Discharger, contends that in the continuing winery operations taking place at the Winery, the Discharger has failed and is failing to comply with the strict terms and conditions of the General Permit – specifically the requirements governing sampling and analysis, the foundation upon which the Discharger can prepare and implement effective Best Management Practices (“BMPs”) in its Storm Water Pollution Prevention Plan (“SWPPP”) for the Winery, ensuring the elimination of all non-authorized storm water discharges.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch alleges the Discharger has failed and is failing to comply with the General Permit annual reporting requirements for reporting years 2015-2016, 2016-2017, and 2017-2018. The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ) revised significantly the reporting requirements for industrial facilities such as the Winery. Under the new General Permit, the Discharger is required to comply with all of the following:

- “Collect and analyze storm water samples from two (2) Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)” (*see* General Permit Section XI.B.2).

River Watch, following review of the available sampling data provided on the SWRCB’s SMARTs reporting database, alleges the Discharger failed to comply with this requirement by sampling and analyzing for only two (2) of the required four (4) samples during the 2015-2016 Annual Reporting Year, for only three (3) of the required four (4) samples during the 2016-2017 Annual Reporting Year, and for none of the required two (2) samples during the first half of the 2017-2018 Annual Reporting Year.¹

- “Analyze all collected samples for the following parameters: “(a) Total suspended solids (TSS) and oil and grease (O&G); (b) pH ...; (c) Additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment ...” (*see* General Permit Section XI.B.6.a.-c.).

River Watch, following review of the “Analytical Reports” of the storm water samples reported by the Discharger, alleges the Discharger fails to reveal monitoring and analysis of the full range of pollutants required by the General Permit. The Reports provide sampling results for Oil and Grease, Total Suspended Solids, and pH, but fail to provide sampling results for all the “additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of industrial pollutant identified in the pollutant source assessment ...” (General Permit Section XI.B.6.c). In its June 2, 2015 SWPPP, the Discharger identifies a broad range of “industrial materials” and “potential pollutant sources” (*see* SWPPP Section 2.3, and Table 2.1 which is attached to this Notice and incorporated herein by reference). River Watch alleges the Discharger’s failure to provide full sampling results for all of these parameters is a violation of the General Permit.

¹ The Discharger’s 2015-2016 and 2016-2017 Annual Reports state under “Question Information” #3 that the Discharger did “sample the required number of Qualifying Storm Events for the Winery during the reporting year for all discharge locations, in accordance with [General Permit] Section XI.B.” The Annual Report requires, in the event the required number of Qualifying Storm Events are not sampled, that a “Summary of Explanation” must be provided in an Attachment 1. There are no explanations in either Annual Report providing an Explanation for the insufficient number of samples.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The lands in the Napa River watershed produce a harvest of unparalleled bounty that draws acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Napa County landowners. The Winery appears to support this, as it proclaims on its website - “From 100 acres of exceptional Stags Leap District Cabernet Sauvignon at Clos Du Val’s acclaimed Hirondelle Estate Vineyard to the prized Pinot Noir and Chardonnay vines of the Gran Val Vineyard in Carneros, Clos Du Val’s wines are made using grapes from some of the most cherished winegrowing land in Napa Valley” (*see* <https://www.closduval.com/estate-wines>).

The Discharger’s operations, detailed in Section 2.1.2. (*Facility Operations*) in the current SWPPP, “consist of all activities required to produce, distribute and sell wine onsite. A list of specific industrial activities is provided below:

- Receiving area for grapes, crush pad and shipping and receiving of wine
- Dumpster staging area for general trash and recycling
- Loading and unloading of CO₂, SO₂ and other chemicals essential to production of wine
- Disposal and removal of spent grape skins, grape stems, and diluted grape juice”.

The Winery is classified on the NOI as SIC Code 2084 (“Wines, Brandy, and Brandy Spirits”), triggering monitoring and sampling for the full range of mandated and “additional parameters” listed above. Industrial operations at the Winery are conducted both indoors and outdoors where they are subject to rain events. Because there is no public record of a SWRCB or RWQCB exemption from the collecting and analyzing of the range of pollutants identified in Table 2.1 of the SWPPP, without implementing the full range of required sampling and analysis there is no accurate measure by which to determine whether required BMPs under General Permit Section X are both implemented at the Winery and effective to ensure no unlawful discharge(s) of the pollutants identified above from the Winery discharge to the Napa River – a water of the United States. This concern for effective storm water pollution control extends to the following:

- Two process wastewater ponds and a fire protection pond identified in SWPPP Sections 2.1.3 and 2.1.4, Table 5.3, and the Site Map in Appendix A. BMPs in SWPPP Section 3 are not detailed sufficiently to determine whether these ponds are lined or unlined, and whether they are sufficient to hold all regulated storm water prior to evaporation, reuse, or recycling at the Winery.
- “Erosion and Sediment Controls” identified in SWPPP Section 3.1.5 are not detailed sufficiently to determine whether the roadways used for the trucking of supplies to, from, and within the Winery are constructed and maintained to properly control storm water discharges from the Winery.

Note that in addition to the pollution controls set forth in the General Permit, the RWQCB has established water quality standards applicable to facilities such as the Winery.

The RWQCB's Basin Plan includes both a narrative toxicity standard and a narrative oil and grease standard, providing that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides, and other hydrocarbons.

3. The Person or Persons Responsible for the Alleged Violation.

The entity responsible for the alleged violations is Clos Du Val Wine Company, Ltd., referred to in this Notice as the Discharger.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at 5330 Silverado Trail in Napa, California, including the waters of the Napa River – a water of the United States.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from July 1, 2015 to June 27, 2018. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures is necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Winery:

1. Compliance with the sampling and monitoring requirements for the full range of pollutants including, but not limited to:
 - pH, total suspended solids, total organic carbon, or oil & grease (the standard pollutants); and
 - all “Potential Pollutant Sources” listed in Table 2.1 in the Discharger’s current SWPPP for the Winery.
2. A more thorough annual assessment of the need for analytical monitoring of the pollutants as required in the Annual Report “Question Information” #8.
3. Preparation of a completed SWPPP Table 5.5 to identify each “Pollutant Source Assessment constituent.”
4. Clarification in the current SWPPP as to the procedures for compliance with “Representative Sampling Reduction” provided in General Permit Section XI.C.4 and as required in the Annual Report “Question Information” #6.
5. Preparation and submittal to the RWQCB of a “Reasonable Potential Analysis” for the Winery and its industrial operations.
6. Implementation of updates to the Discharger’s SWPPP that include, but are not limited to, additional BMPs necessary to address any violations of the General Permit identified by required sampling and analysis.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger’s alleged violations of the CWA as set forth in this Notice.

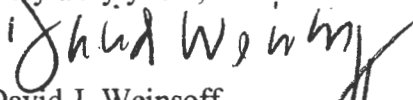
The General Permit, in the very first “Standard Condition,” states that “Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage” (*see* General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California

are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certify that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (see General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$53,484.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Winery. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


David J. Weinsoff

DW:lm

Service List

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Michael Stoker, Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Steve Tamburelli, Registered Agent
Clos Du Val Winery Company, Ltd.
15 Reno Court
Napa, CA 94558

INDUSTRIAL ACTIVITIES STORMWATER POLLUTION PREVENTION PLAN

for

Clos Du Val Wine Co., Ltd

Facility Address:

5330 Silverado Trail, Napa, CA 94558

Waste Discharge Identification (WDID):

TBD

Exceedance Response Action (ERA) Status:

Baseline

Legally Responsible Person [LRP]:

Clos Du Val Wine Co., LTD

5300 Silverado Trail, Napa, CA 94558

John Clews

(707) 261-5251

Duly Authorized Representative:

Dominic Drozdowicz

(707) 261-5235

Prepared for:

Clos Du Val Wine Co., LTD

5300 Silverado Trail, Napa, CA 94558

SWPPP Prepared by:

Summit Engineering, Inc.

463 Aviation Bldg., Suite 200, Santa Rosa, CA 95403

SWPPP Preparation Date

June 2, 2015

SUMMIT ENGINEERING, INC.
Project No. 2015096

Table 2.1 Industrial Activities and Associated Materials

Industrial Activity	Associated Industrial Materials	Material Quantity	Material Physical Characteristics	Material Location	Associated Pollutants	Stormwater Exposure Pathway
Grape Harvest	Grapes	1200 Tons	Solid/Liquid	Crush Pad Area	Organics and Sediment	Delivered to shipping receiving area and processed indoors
Wine Making	Spent Grape Skins, Seeds and Stems	1200 Tons	Solid/Liquid	Pomace Debris Box	Organics and Sediment	Stored in Pomace Storage Area
Loading and Unloading	Wine	120,000 gals	Liquid	In front of Press Area	Organics, Sediment, and pH	Shipping and Receiving Area
Storage	N2, CO2, and Argon	2-4 HP Cylinders	Gas	North side of winery	Airborne Pollutants, Dust and Particles	Delivered in Loading Area, Stored in Tanks and in Building
Enology	Misc. Acids, Bases & Iodine Base- N2OH Acids- Sulfuric & Phosphoric	1 x 36 gal SO2 solution/month, PAA 5 gal/harvest	Liquid	Outside on the north side of the winery inside tank room	Toxic Chemicals	Delivered in Loading Area, Stored in Winery Building
Loading and Unloading	Pallets of wine	1400 pallets	Cardboard, glass, cork	Warehouse	Truck Traffic Oil and Grease	Loaded with forklift into truck

SUMMIT ENGINEERING, INC.
Project No. 2015096

Table 2.1 Industrial Activities and Associated Materials

Industrial Activity	Associated Industrial Materials	Material Quantity	Material Physical Characteristics	Material Location	Associated Pollutants	Stormwater Exposure Pathway
Storage	Glycol	4 x 55 gal drums	Liquid	Warehouse	Organics, Toxic Chemicals	Stored in water tight tank and pumped through closed system
Winery Storage	Ethyl Alcohol	15.5 gals	Liquid	Chardonay/Pinot room	Organics, Toxic Chemicals	Stored in winery building in containers
Waste Disposal	Facilities Waste	2 Dumpsters on site	Garbage	South side of the warehouse	Organics, Sediment, Oil and Grease	Stored in Trash Container in Outdoor Storage